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EXPRESS MAIL NO. EL 767376804 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VIRGIN ENTERPRISES LIMITED,

Opposer,

v.

KAY GUITAR COMPANY,

Applicant.

Opposition No. 91154392

NOTICE OF FILING

PLEASE TAKE NOTICE that, in accordance with Trademark Rule 2.125(c), 37 C.F.R. § 2.125(c), opposer, Virgin Enterprises Limited, has today filed with the Trademark Trial and Appeal Board the certified transcripts of the depositions of Lori Levin-Hyams and Andrea Moreno.

Respectfully Submitted,

Dated: New York, New York
April 19, 2004

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP

By: Hayley W. Werner
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04-21-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

Attorneys for Opposer
VIRGIN ENTERPRISES LIMITED

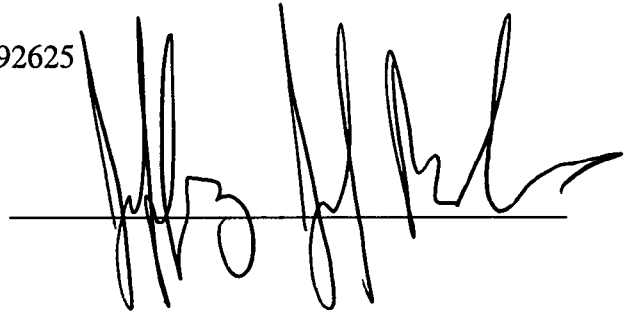
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copies of the foregoing **NOTICE OF FILING** of the certified transcripts of the depositions of Lori Levin-Hyams and Andrea Moreno was served this 19th day of April 2004 upon counsel for Applicant Kay Guitar Company, via first-class U.S. mail to:

Susan L. Ruzbasan, Esq.
Corporate Counsel
Asian-American Manufacturing Company and Kay Guitar
Company
1 Twin Lakes Circle
Corona Del Mar, CA 92625

A handwritten signature in black ink, appearing to read 'Susan L. Ruzbasan', is written over a horizontal line.

ORIGINAL

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2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

3 BEFORE THE TRADEMARK TRIAL AND APPEAL BOND

4 -----x

5 VIRGIN ENTERPRISES LIMITED,

6 Opposer,

7 v.

Opposition No. 91154392

8 KAY GUITAR COMPANY,

9 Applicant.

10 -----x

11
12 DEPOSITION OF ANDREA MORENO

13 New York, New York

14 Tuesday, October 28, 2003

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22
23 DAVID FELDMAN & ASSOCIATES (USA)

575 Madison Avenue

24 New York, New York 10022

(212) 921-0771 Fax: (212) 605-0508

25

October 28, 2003

10:31 A.M.

DEPOSITION of ANDREA MORENO, taken by
Opposer, pursuant to notice, at the offices of
Pennie & Edmonds, 1155 Avenue of the Americas,
New York, New York, before Kathy S. Klepfer, a
Registered Merit Reporter and Notary Public of
the State of New York.

A P P E A R A N C E S

PENNIE & EDMONDS, LLP

Attorneys for Opposer

1155 Avenue of the Americas

New York, New York 10036-2711

BY: JACQUELINE M. LESSER, ESQ.

JOYCE M. FERRARO, ESQ.

Andrea Moreno

(Time noted: 10:31 A.M.)

ANDREA MORENO, called as a

witness, having been duly sworn by a Notary
Public, was examined and testified as
follows:

EXAMINATION BY

MS. LESSER:

Q. Would you state your name for the
record?

A. Andrea Moreno.

Q. And by whom are you employed?

A. Virgin Entertainment Group.

Q. And how long have you been employed by
Virgin Entertainment Group?

A. Eight years.

Q. And what is Virgin Entertainment
Group? What do they do?

A. It's a part of the whole of the Virgin
group. There's three other companies. It's
Virgin Megastores and Virgin Pulse -- I'm sorry,
VirginMega.com and Radio-Free Virgin.

Q. And those are all part of the Virgin
Entertainment Group?

A. Yes.

1 Andrea Moreno

2 Q. And what is Virgin Megastore?

3 A. And Virgin Megastores are the 23
4 stores in the United States that sell music and
5 DVDs and books.

6 Q. And what is VirginMega.com?

7 A. VirginMega.com is a website powered by
8 Amazon, and it's -- VirginMega.com is really a
9 Virgin skin over an Amazon background.

10 Q. Does that mean that you can purchase
11 products sold in the Virgin Megastores on line
12 through the site?

13 A. Yes.

14 Q. And what is Radio-Free Virgin, just
15 generally?

16 A. Radio-Free Virgin is a free and
17 fee-based Internet music streaming service.

18 Q. And as an employee of Virgin
19 Entertainment Group, do you work for one or more
20 of these three entities yourself?

21 A. I work for the megastores.

22 Q. And how long have you worked for the
23 megastores?

24 A. Eight years.

25 Q. And what is your current job title?

1 Andrea Moreno

2 A. Senior Field Marketing Manager.

3 Q. And how long have you held that
4 position?

5 A. For about two years, and before that I
6 was Field Marketing Manager.

7 Q. Can you briefly summarize your job
8 responsibilities in your current job at the
9 Virgin Megastore?

10 A. Yes. I sell co-op advertising. I
11 sell visibility inside the stores, inside the
12 megastores; I do sponsorships and festivals; I
13 do in-store events; I oversee three field
14 marketing managers and one assistant; I look
15 over ten of the megastores on the East Coast and
16 the Central region.

17 Q. In what states are the megastores
18 located, if you know?

19 A. Illinois, New York, Florida, Texas,
20 New Orleans, California, Nevada, Utah and
21 Massachusetts.

22 Q. Anyplace else? Is that it?

23 A. There's one in Canada.

24 Q. You mentioned that you are responsible
25 for co-op ads. Could you explain for the record

1 Andrea Moreno

2 what a co-op ad is?

3 A. A co-op ad is when I sell advertising
4 space in a Virgin Megastore creative, I sell
5 them a spot for a record and they pay for it.
6 Basically, we create and book it.

7 (Exhibit 28, a co-op ad placed in
8 Timeout Magazine; Exhibit 29, a co-op ad
9 placed in the Village Voice; Exhibit 30, a
10 co-op ad for an in-store performance; and
11 Exhibit 31, a Village Voice campaign ad,
12 marked for identification, as of this date.)

13 Q. Ms. Moreno, I'm going to put before
14 you what have been marked as Exhibits 28, 29, 30
15 and 31.

16 Can you identify for the record
17 Exhibit 28?

18 A. Yes, that's an ad that was co-oped
19 through home office, actually placed in Timeout
20 Magazine.

21 Q. Is this one of the co-op ads that you
22 were speaking about a few minutes ago?

23 A. Yes.

24 Q. And you mentioned it was placed in
25 Timeout Magazine. How do you know that?

1 Andrea Moreno

2 A. Just, I recognize it. Actually this
3 one does say Timeout New York on it.

4 Q. Does that appear to be a page torn out
5 of the Timeout Magazine?

6 A. Yes.

7 Q. And do you know what month that would
8 have run in Timeout Magazine?

9 A. October.

10 Q. And how do you know that?

11 A. Our sale dates are written on the ad
12 and it's written on the back of the magazine.

13 Q. By written on the back of the
14 magazine, do you mean it was printed --

15 A. Printed on the back page.

16 Q. Okay. And you are familiar with the
17 ad?

18 A. Yes.

19 Q. And is this one of the types of co-op
20 ads that you are responsible for?

21 A. Yes.

22 Q. And how long have you been responsible
23 at Virgin Megastore for the co-op
24 advertisements?

25 A. For about six years.

1 Andrea Moreno

2 Q. And do you consider this ad
3 representative of the types of co-op
4 advertisements placed by Virgin Megastore?

5 A. Yes.

6 Q. Are these ads placed throughout the
7 country by Virgin Megastore, to the best of your
8 knowledge?

9 A. Yes.

10 Q. Can you look at Exhibit No. 29 and
11 identify that for the record?

12 A. Okay. This is another ad that we
13 co-oped locally, and this was a Village Voice
14 ad.

15 Q. And when you say co-op locally, what
16 do you mean by locally?

17 A. Just we -- sometimes the home office
18 will co-op ads that run in New York
19 publications, but we also sell them locally,
20 I'll sell them or my marketing manager in Union
21 Square will sell them -- will co-op them to the
22 vendors.

23 Q. You mentioned vendors. What do you
24 mean by vendors?

25 A. The vendors are any of our partners

1 Andrea Moreno

2 that we sell their product in the stores,
3 whether it be the music labels or distributors,
4 the DVD distributors, the book publishers, the
5 games companies, any line that we sell in the
6 store.

7 Q. And can you take a look at Exhibit No.
8 30 and identify that exhibit for the record?

9 A. Okay. This is another ad that we
10 booked locally here in New York, co-oped it for
11 an in-store performance.

12 Q. What is an in-store performance?

13 A. In-store performance is when we book a
14 band to play live inside the stores, inside the
15 megastores, or do an autograph signing, and we
16 have these frequently with rock bands and
17 different types of acts.

18 Q. And as part of your job
19 responsibilities are you responsible for
20 in-store performances?

21 A. Yes.

22 Q. So you are responsible for booking
23 these bands for these in-store performances?

24 A. Yes.

25 Q. Do you know where that co-op ad ran?

1 Andrea Moreno

2 A. In the Village Voice.

3 Q. And how do you know that?

4 A. This one I just recognize, plus we
5 actually -- oh, and there's one on the back page
6 that we have a Voice logo; we allowed them to
7 put a logo in the ad.

8 Q. So the Voice logo is included in the
9 ad?

10 A. Yes.

11 Q. And how long have you in your current
12 job, or in any of your jobs at the Virgin
13 Megastores even prior to your current position
14 two years ago, how long have you been involved
15 in in-store promotions, booking bands for the
16 megastore?

17 A. For over six years.

18 Q. And is your role specific to one
19 specific megastore or a group of megastores,
20 Virgin Megastores?

21 A. A group of megastores. I oversee ten
22 megastores and I book for the three New York
23 stores, which is Union Square, Times Square and
24 Long Island, and then I oversee the three field
25 marketing managers book the bands for the other

Andrea Moreno

ten.

Q. What types of bands are typically booked for these events?

A. Mainly rock bands, performances, new artist, emerging artist or, in Times Square, famous mainstream pop bands.

Q. And has, for the past six years, Virgin Megastore placed co-op ads alerting the public to a particular in-store performance?

A. Yes.

Q. Can you take a look at what has been marked as Exhibit 31? Is that 31?

A. Yes.

Q. Can you identify this document for the record?

A. Okay. This is also a Village Voice ad. This is a co-op ad that was booked from home office, and it's known as our campaign ad.

Q. And what do you mean by a campaign ad?

A. We have different monthly campaigns, and this particular month it was the \$10 sale, and within this ad I actually have a local insertion where I booked a portion of the ad myself for a book signing that we're having.

Andrea Moreno

Q. Okay. And this is a \$10 sale of what?

A. CDs, compact discs, and there's also a DVD sale within the ad as well.

Q. And do you know in what publications this ad ran or is running?

A. This is Village Voice.

Q. And do you know the dates of this particular ad?

A. This was October 22nd, I believe. This actually doesn't have the -- oh, yes, it does. Sorry. The dates are on the back page, and it also says Village-Voice.

Q. What are the dates of this ad?

A. The sale dates are October --

Q. Is the sale going on now?

A. At 9/30 to 11/03.

Q. We have a few days before the sale so I know to go.

(Exhibit 32, a Timeout ad for an in-store performance of Donna D'Cruz, marked for identification, as of this date.)

Q. Can you identify what has been marked as Exhibit 32 for the record?

A. This is a Timeout ad that I booked for

Andrea Moreno

an in-store performance that happened yesterday.

Q. And who was the artist who performed?

A. Donna D'Cruz.

Q. And when you have specific in-store performance, are there any other promotions that are tied to the in-store performances in terms of products or --

A. Yes. Sometimes, for example, with this one, we gave away an aromatherapy candle with purchase, but we do give-aways frequently with -- for example, like an autographed signed guitar from the bands, which if they have a new release coming out, a band will have -- recently we had Stereophonics, so one of the band members will autograph a guitar and we'll use it as an enter-to-win contest.

Q. Okay.

(Exhibit 33, an in-store flier, marked for identification, as of this date.)

MS. LESSER: I'm going to mark the next exhibit, which is Exhibit 33, I will represent as a flier, but because of the size of the flier and the fact that the text covers the entire flier, in order not to

Andrea Moreno

obscure any of the text, we are marking into the record a true and accurate -- or, I will have the witness look at both to determine whether it is a true and accurate representation of what's on the flier.

Opposing counsel is not here to cross or physically examine at this point. However, we will make the original available for inspection for opposing counsel should they want to visually examine the original for which they were noticed upon this deposition and could have done so today, but we will still make it available to them should they have any concerns.

But simply so that we do not obscure any of the text, we are going to try to mark into the record here a copy.

Q. Ms. Moreno, I'm going to put before you what has been identified as Exhibit No. 33. Could you identify that --

A. Okay.

Q. -- for the record?

A. This is an in-store flier that we have in the megastores to bag stuff or on-the-counter

Andrea Moreno

displays for consumers to take, and it's touting our in-store performance. These are rock bands that perform this week in both the Union Square and Times Square locations.

Q. Are you familiar with this particular in-store --

Is it a flier?

A. Yes.

Q. Are you familiar with this particular in-store flier?

A. Yes.

Q. I will represent to you that this is -- I'm handing you now what was the actual flier and what you were looking at is a photocopy of it.

Is the photocopy which we have marked into evidence a true and accurate representation of what appears to be the actual flier?

A. Yes.

Q. And is this a specific -- how often do you do this specific event?

A. This was the CMJ Music Marathon sponsorship, and as part of that we do in-store performances throughout the week. So this is a

1 Andrea Moreno

2 yearly thing, and we sponsored it for four or
3 five years in a row.

4 Q. When you sponsored it, you mean the
5 CMJ Music Marathon?

6 A. Yes.

7 Q. What is CMJ?

8 A. CMJ is a College Music Journal, that's
9 what it stands for, but the music marathon is a
10 festival and convention that happens every year
11 basically to promote emerging artists and
12 developing bands, independent bands, and that's
13 something that Virgin is behind.

14 Q. Do the events relating to the CMJ
15 Music Marathon only occur at the Times Square
16 store or at other stores as well?

17 A. At the Union Square store as well.
18 And then there are the bands that perform around
19 50 clubs around New York City between the four
20 days of the conference.

21 Q. Would you know what the most popular
22 Virgin Megastore is, where it would be located?

23 A. That would be our flagship store,
24 Times Square.

25 Q. And how do you know that?

1 Andrea Moreno

2 A. We get daily and weekly sales figures
3 and traffic numbers.

4 Q. What do you mean by traffic numbers?

5 A. Number of people walking through the
6 doors as well as the number of people buying
7 product in the stores and their sales per
8 transaction.

9 Q. Would you know the traffic figures to
10 the Times Square Megastore?

11 A. Yes. I have them on a weekly and a
12 monthly basis.

13 Q. Could you, for the record, state what
14 the monthly and weekly traffic to the Times
15 Square Virgin Megastore is?

16 A. Okay. For Times Square it's averaging
17 70 to 95,000 per week and 250 to 350,000 per
18 month.

19 Q. And how do you know that?

20 A. This is based on reports that are
21 generated to me through home office.

22 Q. And by home office, do you mean the
23 Virgin Entertainment Group?

24 A. Yes, based in LA.

25 Q. And do you receive these reports on a

Andrea Moreno

regular basis?

A. Yes.

Q. And why do you receive these reports?

A. I use these reports for several reasons. For the traffic reports, I look at traffic within the megastores that I oversee to gauge whether promotions are effective and when we need to concentrate on traffic-driving promotions.

Q. And what are traffic-driving promotions?

A. They can be anything from using outside street teams, going to clubs and sponsoring nights where we use bounce-back coupons to drive people back into the stores, could be an in-store performance.

Q. What are bounce-back drive-back coupons?

A. Bounce-back coupons are basically just an offer that tries to get the consumer to come into the store to use that offer in the megastores. Could be a 10 percent off or \$4 off coupon.

(Exhibit 34, Virgin Recommends

1 Andrea Moreno

2 stickers, marked for identification, as of
3 this date.)

4 Q. Ms. Moreno, you mentioned the vendors
5 for the megastore earlier, so I take it you are
6 familiar with the products sold by the Virgin
7 Megastore?

8 A. Yes.

9 Q. And what types of products are sold by
10 the Virgin Megastore?

11 A. Compact discs, DVDs, books, games,
12 accessories, and then we also sell Pulse
13 products, Virgin Pulse products inside the
14 stores and Virgin Mobile products.

15 Q. What are Virgin Pulse products?

16 A. It's a line of electronics, affordable
17 electronics.

18 Q. Are they produced by the Virgin
19 Entertainment Group or Virgin Megastores?

20 A. No.

21 Q. How is it that they use the name and
22 mark Virgin, do you know?

23 A. It's Virgin Pulse and Virgin Mobile
24 are part of the Virgin group as a whole as well
25 as Virgin Entertainment Group is one of the

Andrea Moreno

Virgin groups.

Q. Are all of the products that are sold by the Virgin Megastore marked with any types of labels or other indications that they have been purchased at the Virgin Megastore?

A. Yes.

Q. I'm going to place before you what has been marked as Exhibit No. 34. Can you identify this exhibit for the record?

A. Yes, these are Virgin Recommends stickers placed on a line of CDs that we carry and recommend and Virgin Recommends is also sort of a promotion that we do.

Q. And who makes these recommendations?

A. The Virgin staff.

Q. And are you familiar with those particular labels?

A. Yes.

(Exhibit 35, Virgin sale price stickers, marked for identification, as of this date.)

Q. I'm going to place before you what has been identified as Exhibit No. 35. Can you identify this for the record?

1 Andrea Moreno

2 A. Yes, these are Virgin sale price
3 stickers that we use in the megastores for sale
4 product.

5 Q. And on what types of products do you
6 place these stickers?

7 A. This could be on any of our products,
8 books, CDs, DVDs, games, accessories.

9 Q. You mentioned books. What types of
10 books are sold at the Virgin Megastore?

11 A. We have all types of books, graphic
12 novels, fiction, non-fiction, music books and
13 magazines.

14 Q. When you say music books, are you --
15 what types of books are you talking about?

16 A. We have a full section of guitar
17 books. We have all kinds of for piano and
18 vocals, whatnot. But there's a full line of
19 guitar books, whether it be instruction or
20 history of. We have sheet music as well.

21 (Exhibit 36, a Virgin book on Virgin
22 Publishing, marked for identification, as of
23 this date.)

24 Q. I'm going to place before you what has
25 been marked as Exhibit No. 36. Can you identify

1 Andrea Moreno

2 this exhibit for the record?

3 A. Yes, this is a book that I brought and
4 bought that we carry at the Virgin Megastores,
5 and it's a Virgin book on Virgin Publishing.

6 Q. You say brought and bought. Where did
7 you bring this from, or, rather, where did you
8 buy this from?

9 A. I bought this from the Times Square
10 Virgin Megastore yesterday.

11 Q. Is this a book that's carried by the
12 Virgin Megastore?

13 A. Yes.

14 Q. And you mention that it's, I think,
15 has a Virgin imprint on it. What do you mean by
16 that?

17 A. It's identified as a Virgin book, so
18 it's out of Virgin Publishing, and there's a
19 line -- there's a series of books that are
20 called the Virgin Encyclopedia that they have
21 and that we carry in the stores.

22 MS. LESSER: I would like to state for
23 the record that we are going to enter into
24 evidence the cover of this book and the
25 preface for this book, but out of

1 Andrea Moreno

2 convenience for the Board and to save space,
3 we are not going to enter the complete book
4 into the record.

5 I will show the witness the book so
6 she can authenticate the exhibit, and
7 although opposing counsel has chosen not to
8 appear at this deposition and examine these
9 exhibits at this time, we will let opposing
10 counsel know that they are, of course, free
11 to come and examine the actual copy of the
12 book, which will remain in our offices, and
13 will of course receive the facsimile copy of
14 the pages, which we will submit in view of
15 the trademark trial and Appeal Board's
16 preference for flat exhibits and exhibits
17 that are not bulky if there is no specific
18 relevance to the bulk of the exhibit.

19 Q. So, with that in mind, Ms. Moreno,
20 could you -- I'm going to put before you what I
21 will represent as the book that you brought with
22 you, and if you can take a look at the book and
23 the marked exhibit and state for the record
24 whether the exhibit is a true and accurate
25 representation of the cover of the book and the

1 Andrea Moreno

2 preface for the book.

3 A. Yes.

4 (Exhibit 37, a Lenny Kravitz cassette,
5 and Exhibit 38, a Mike Oldfield CD, marked
6 for identification, as of this date.)

7 Q. You mentioned earlier that Virgin
8 Megastore also carries CDs and other music. Can
9 you identify for the record what has been marked
10 as Exhibits Number 37 and Number 38?

11 A. Yes. This is a Lenny Kravitz cassette
12 and Mike Oldfield CD, and we carry them both in
13 our megastores.

14 Q. You earlier mentioned, when we were
15 discussing co-op advertisements, record labels.
16 What do you mean by record labels?

17 A. Well, for example, these are both on
18 the Virgin record label. There are five major
19 distribution companies with labels under their
20 umbrella, so this would be under the EMD
21 umbrella, Virgin Records.

22 Q. Does the Virgin Megastore carry all of
23 the five major labels?

24 A. Yes.

25 Q. Including the Virgin label?

1 Andrea Moreno

2 A. Yes.

3 (Exhibit 39, a guitar book, marked for
4 identification, as of this date.)

5 Q. You mentioned earlier that the Virgin
6 Megastore sells a line of books, including
7 guitar books, specifically. Can you identify
8 what has been marked as Exhibit 39 for the
9 record?

10 A. Yes, this is a sampling of one of
11 the -- it's a little kind of book that's shaped
12 like a guitar fret that was purchased from the
13 Virgin Megastore, Times Square Virgin Megastore,
14 on the 24th, and it's an example of one of the
15 types of guitar books that we carry.

16 MS. LESSER: I'm also going to state
17 for the record that, because of the bulk of
18 this exhibit, we are putting into evidence a
19 facsimile of the front of the exhibit and
20 the sales receipt showing the purchase date
21 to which the witness has just testified, and
22 we'll indicate to opposing counsel, who has
23 chosen not to be here for the deposition,
24 that they may examine the actual product,
25 which will remain in our offices.

1 Andrea Moreno

2 Q. Ms. Moreno, can you take a look at the
3 product and the receipt and examine it, look at
4 the copy that has been marked into evidence to
5 determine whether or not the copy is a true and
6 accurate representation of the actual guitar
7 book?

8 A. Yes, it is.

9 (Exhibit 40, The Incredible Guitar
10 Songbook, marked for identification, as of
11 this date.)

12 Q. I'm going to place before you what has
13 been marked as Exhibit No. 40. Can you identify
14 this exhibit for the record?

15 A. This is another book that I purchased
16 yesterday and brought in from the Virgin
17 Megastore Times Square. It's another example of
18 our section for guitar books.

19 Q. And what is this particular book?

20 A. It's The Incredible Guitar Songbook,
21 and it has sheet music inside.

22 Q. Do you know how long the megastore has
23 had a section for guitar and sheet music?

24 A. I believe since we've opened, and
25 that's been eight years since the Times Square

Andrea Moreno

store has been opened, but then the megastores in general since the Los Angeles opening, which I believe was in '94 or '91. Actually, I'm not sure about that date.

Q. But it was in the early 1990s?

A. Yes.

(Exhibit 41, Guitar Magazine; Exhibit 42, Guitar Player; Exhibit 43, Guitar World; and Exhibit 44, Guitar One, marked for identification, as of this date.)

Q. I'm going to place before you what has been marked as Exhibits No. 41 through 44.

Can you identify this group of exhibits for the record?

A. Yes, these are magazines that I purchased yesterday from the Times Square Virgin Megastore with a receipt, and this is just a small example of another section of the book department that has guitar magazines, instructions and just -- it's a Guitar Magazine, Guitar Player, Guitar World and Guitar One magazines.

Q. And I take it that those were the titles of the magazines that have been

Andrea Moreno

identified as from Exhibits 41 through 44?

A. Yes.

Q. Do you know whether these magazines are carried by the Virgin Megastore on a regular basis?

A. Yes.

Q. Why does the Virgin Megastore carry so many guitar magazines?

A. Because we actually cater to clientele within the age demographic 18 to 25, male, which includes lots of guitar players, musicians.

Q. You mentioned earlier that among the products sold at the Virgin Megastore are products of Virgin Pulse and Virgin Mobile; is that correct?

A. Yes.

(Exhibit 45, a Pulse promotional item, marked for identification, as of this date.)

Q. I'm going to place before you what has been marked as Exhibit No. 45. Can you identify this exhibit for the record?

A. Yes. This is a Pulse promotional item that we give away to consumers.

Q. So the promotional item is available

1 Andrea Moreno

2 at the Virgin Megastore?

3 A. Yes.

4 Q. Does that represent the line of Virgin
5 Pulse products carried by the megastore?

6 A. Yes.

7 Q. And do you know whether or not that
8 promotional piece is available at the megastore
9 now?

10 A. Yes, I brought this from the Times
11 Square store, and I know that we've just
12 launched the Pulse products last week so they're
13 in each of the 23 Virgin Megastores.

14 (Exhibit 46, a Virgin Mobile pamphlet,
15 marked for identification, as of this date.)

16 Q. Okay. I'm going to put before you
17 what has been marked as Exhibit No. 46. Can you
18 identify this exhibit for the record?

19 A. Yes, this is a Virgin Mobile pamphlet
20 that is also available in the Virgin Megastores
21 near the Virgin Mobile product, and we use these
22 for consumers to take just for information.

23 Q. Does that represent the line of Virgin
24 Mobile products available at the Virgin
25 Megastore?

1 Andrea Moreno

2 A. Yes.

3 Q. And do you know whether that's
4 available at the megastore now?

5 A. Yes.

6 Q. And do you know how long those
7 products have been available in the megastore?

8 A. Since the Virgin Mobile launch, and I
9 believe it's been a year, over a year now.

10 (Exhibit 47, a Virgin Megastore
11 shopping bag, marked for identification, as
12 of this date.)

13 Q. I'm going to put before you what has
14 been marked as Exhibit No. 47. Can you identify
15 this exhibit for the record?

16 A. Yes, this is a Virgin Megastore
17 shopping bag used to put products that are
18 purchased by consumers.

19 Q. And are you familiar with that
20 shopping bag?

21 A. Yes.

22 Q. Is that the current shopping bag used
23 by the company?

24 A. Yes.

25 Q. And how do you know that?

1 Andrea Moreno

2 A. I frequently use them. I brought this
3 one from the megastore myself yesterday.

4 MS. LESSER: We can go off the record
5 now.

6 (Recess; time noted: 11:27 A.M.)

7 (Time noted: 11:33 A.M.)

8 BY MS. LESSER:

9 Q. Ms. Moreno, you mentioned that Virgin
10 Entertainment Group also owned the
11 VirginMega.com site; is that correct?

12 A. Yes.

13 Q. And what is VirginMega.com?

14 A. VirginMega.com is a website that is
15 powered by Amazon.

16 Q. And is it a retail site?

17 A. Yes.

18 Q. And what is sold on that site?

19 A. Everything that we carry in the Virgin
20 Megastores, or we also have, since its powered
21 by Amazon, if you put in another product that we
22 don't carry, it takes you to a menu where you
23 could be linked to a sponsor that -- or a
24 partner that does carry that product and you can
25 buy something on line.

1 Andrea Moreno

2 (Exhibit 48, VirginMega.com page,
3 marked for identification, as of this date.)

4 Q. I'm going to put before you what has
5 been marked as Exhibit No. 48. Can you identify
6 that exhibit for the record?

7 A. Yes. This is the VirginMega.com page
8 that you enter when you just put in
9 VirginMega.com.

10 Q. And I believe that you referred to
11 before other -- that you referred to the fact
12 that this was powered by Amazon. Does the fact
13 that it's powered by Amazon appear anyplace on
14 the download to the VirginMega.com site?

15 A. Yes, on the home page it says
16 VirginMega.com powered by Amazon.com.

17 Q. And that's listed on the exhibit that
18 you are looking at?

19 A. Yes.

20 Q. You also indicated that there are
21 other partners on the Amazon.com site; is that
22 correct?

23 A. Yes.

24 (Exhibit 49, a page from the
25 VirginMega.com site, marked for

1 Andrea Moreno

2 identification, as of this date.)

3 Q. I'm going to put before you what has
4 been marked as Exhibit 49. Can you identify
5 this exhibit for the record?

6 A. Yes. This is an example of, I punched
7 in guitars to the VirginMega.com site and it
8 took me to -- since we don't sell guitars inside
9 the stores, it took me to this page, which gives
10 me a menu of different categories to choose
11 from.

12 Q. And are guitars available by one of
13 the Amazon.com partners?

14 A. Yes. After this link, it took me to a
15 sponsor partner that does carry guitars and sell
16 guitars on line.

17 (Exhibit 50, a page from the
18 Musician's Storehouse.com website, marked
19 for identification, as of this date.)

20 Q. Okay. I'm going to place before you
21 what has been marked as Exhibit No. 50.

22 A. So this is the --

23 Q. Can you identify that exhibit for the
24 record?

25 A. Yes. This is the page that I clicked

1 Andrea Moreno

2 on when I just put "guitars" in the search
3 engine and it gives me a choice of sponsored
4 links. So I clicked on the first one, which is
5 the Musician's Storehouse.com.

6 (Exhibit 51, a page from the
7 Musicians' Storehouse.com website for
8 guitars, marked for identification, as of
9 this date.)

10 Q. I'm going to place before you what has
11 been marked as Exhibit No. 51 for the record.
12 Could you identify this exhibit for the record?

13 A. Yes, and this is the page that I went
14 to for Musicians' Storehouse.com, which has a
15 variety of guitars available on-line that I
16 could buy.

17 Q. So, to summarize this, if one were to
18 go on to the VirginMega.com site and search for
19 the guitars, would they be able to find guitars?

20 A. Yes, within two clicks you would be on
21 a site that sells guitars on-line.

22 Q. I believe earlier you mentioned
23 VirginMegaMagazine.com. What is
24 VirginMegaMagazine.com?

25 A. VirginMegaMagazine.com is basically

1 Andrea Moreno

2 editorial, and it has -- includes Web pages for
3 the store, individual megastores, which ties our
4 in-store events and our promotions, if we have
5 give-aways, and there's reviews on there as
6 well, and we don't sell product on that end.

7 Q. Do you use VirginMegaMagazine.com to
8 promote the actual bricks and mortar stores?

9 A. Yes.

10 Q. So are you familiar with that site?

11 A. Yes.

12 (Exhibit 52, the home page for
13 VirginMegaMagazine.com, marked for
14 identification, as of this date.)

15 Q. I'm going to put before you what has
16 been marked as Exhibit No. 52. Can you identify
17 that exhibit for the record?

18 A. Yes. This is a
19 VirginMegaMagazine.com. When you click off of
20 the home page for VirginMega.com there's a link
21 to go to the VirginMegaMagazine, and this is the
22 page that you would enter.

23 Q. Is that a true and accurate
24 representation of a download of the
25 VirginMegaMagazine.com site?

1 Andrea Moreno

2 A. Yes.

3 Q. You earlier in this deposition
4 mentioned various promotions, including guitar
5 giveaways; is that correct?

6 A. Yes.

7 Q. Do you advertise or promote or list,
8 rather, such promotions on the
9 VirginMegaMagazine.com site?

10 A. Yes, regularly.

11 Q. So marketing and promotional events
12 would be listed on the site?

13 A. Yes.

14 Q. And that's in addition to any co-op
15 advertising, fliers, and other type of marketing
16 and advertising done for the Virgin Megastore?

17 A. Yes.

18 (Exhibit 53, a listing for a megastore
19 event, marked for identification, as of this
20 date.)

21 Q. I'm going to show you what has been
22 marked as Exhibit -- we've marked as Exhibit No.
23 53. Can you identify this exhibit for the
24 record?

25 A. Yes, this is a listing for a megastore

Andrea Moreno

event. It was clicked on one of the store pages and it goes over our promotions, and in this example there's a "Win a Stereophonics guitar" enter-to-win promotion celebrating the new album by that band, "You Got to Go There to Come Back," and we're giving away an autographed signed guitar.

Q. And is this an example of what you earlier had referred to as give-aways of guitars?

A. Yes.

Q. And does Virgin Megastore routinely give away guitars?

A. Yes.

(Continued on the next page.)

Andrea Moreno

Q. And is that specific to the Virgin
Megastore Times Square or something that's done
by Virgin Megastores generally?

A. This is, in general, all 23 Virgin
megastores give away guitars.

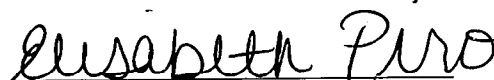
MS. LESSER: Ms. Moreno, thank you
very much.

THE WITNESS: You're welcome.

(Time noted: 11:49 A.M.)

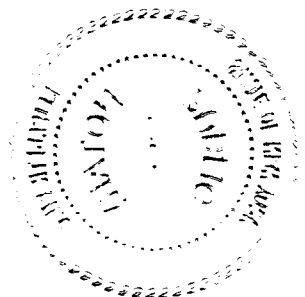

ANDREA MORENO

Subscribed and sworn to
before me this 15 day
of April 2004.



ELISABETH PIRO
Notary Public, State of New York
No. 01PI6098275
Qualified in Queens County
Commission Expires 09/08/2007

Commission Expires 06/01/2005
Qualified in Queens County
No. 019093213
W. J. W.



STATE OF NEW YORK)
: SS
COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered
Merit Reporter and Notary Public within and
for the State of New York, do hereby
certify:

That ANDREA MORENO, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto
set my hand this 17th day of November 2003.

KATHY S. KLEPFER, RMR

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NAME OF CASE: Virgin Enterprises Ltd. v. Kay Guitar

DATE OF DEPOSITION: October 28, 2003

NAME OF WITNESS: ANDREA MORENO

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1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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ANDREA MORENO

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VIRGIN ENTERPRISES LIMITED,)

)

Opposer,)

)

vs.)

)

KAY GUITAR COMPANY,)

)

Applicant.)

-----)

**DUPLICATE
ORIGINAL**

DEPOSITION OF LORI LEVIN-HYAMS

New York, New York

Wednesday, October 29, 2003

DAVID FELDMAN & ASSOCIATES (USA)

575 Madison Avenue

New York, New York 10022

(212) 921-0771 Fax: (212) 605-0508

October 29, 2003

10:20 a.m.

Deposition of LORI LEVIN-HYAMS, held at
the offices of Pennie & Edmonds, LLP, 1155 Avenue
of the Americas, New York, New York, 10036
pursuant to Subpoena, before William Byrne, a Notary
Public of the State of New York.

A P P E A R A N C E S:

PENNIE & EDMONDS, LLP

Attorneys for Opposer

1155 Avenue of the Americas

New York, New York 10036

BY: JACQUELINE M. LESSER, ESQ.

And

JOYCE M. FERRARO, ESQ.

1
2 L O R I L E V I N - H Y A M S, called as a
3 witness, having been duly sworn by a Notary
4 Public, was examined and testified as
5 follows:

6 EXAMINATION BY

7 MS. LESSER:

8 Q. Can you state your name for the
9 record.

10 A. Lori Levin-Hyams.

11 Q. Would you spell that, please.

12 A. L-o-r-i L-e-v-i-n - H-y-a-m-s.

13 Q. By whom are you employed?

14 A. I'm employed by Virgin Management.

15 Q. What is your job title for Virgin
16 Management?

17 A. I'm vice president of corporate
18 affairs for the Virgin group of companies in the
19 U.S.A.

20 Q. Can you briefly summarize your job
21 responsibilities?

22 A. Sure. I oversee publicity in the
23 United States. I oversee publicity for the brand
24 and for Sir Richard Branson, B-r-a-n-s-o-n.

25 Q. How long have you been with Virgin?

1 L. Levin-Hyams

2 A. I have worked with Virgin since 1985.

3 I have been employed by Virgin since 1987.

4 Q. By whom were you employed in 1985?

5 A. I was worked at a public relations
6 firm called the Press Office.

7 Q. So since 1985 have you done press and
8 P&R for the Virgin group?

9 A. Yes.

10 Q. And prior to 1985, can you briefly
11 summarize your work experience?

12 A. I worked in the music industry. I
13 worked at a company call Norby Walters, N-o-r-b-y
14 W-a-l-t-e-r-s, and I would go on the road and work
15 with various bands that were big name bands in the
16 early '80s. And from there I went to the Press
17 office. I did some music management, I managed a
18 couple of artists in the early '80s, and from
19 there I went to the Press office, where I did
20 public relations for groups, such as Kiss, South
21 Side Johnny and John Para and various other
22 clients. It was a rock and roll music oriented
23 public relations firm.

24 And in 1984 Richard Branson began
25 Virgin Atlantic Airways, and he used the Press

1 L. Levin-Hyams

2 office for the launch of the airline, and because
3 he was beginning a rock and roll airline expanding
4 his music groups and the brand or introducing the
5 brand formally into the United States. I worked
6 on that account in 1985 when Richard did his first
7 or second attempt to cross the Atlantic by speed
8 boat, I worked on that. And then from there I
9 worked on all his other ventures he was doing in
10 America, the start-up of the airline flying out of
11 Miami. I was involved in his balloon flights.
12 And in 1987 he made me an offer to come and work
13 directly for him. At the time he was I did not
14 know he was setting up Virgin Records in America,
15 and he wanted me to head up the publicity for
16 Virgin Records.

17 I was hired by the airline Virgin
18 Atlantic Airways and found out later on I was in
19 the wrong place, but I stayed there.

20 Q. What do you mean you were in the wrong
21 place?

22 A. It was supposed to be a Virgin
23 Records, but because of the way he approaches
24 business and because music was the root of
25 everything that he was doing and the way we were

L. Levin-Hyams

promoting and publicizing Virgin Atlantic Airways, it turned out to be the right fit at the right time. And I represented Virgin Atlantic Airways and Sir Richard Branson. I was there until about 1995, and my primary responsibilities were Virgin Atlantic Airways, Press, Sir Richard Branson, Press and to work on the numerous challenges he was doing with his balloon flights, an attempt to fly around the world nonstop in a hot air balloon. I worked on the Virgin Atlantic flyer, the crossing of the Atlantic by hot air balloon and the Pacific flyer. And all of these were done as a large part to promote the brand and began publicity for Sir Richard and Virgin in the U.S., where I was just starting to grow his companies.

In '95 I left Virgin Atlantic Airways and joined Virgin Management to become part of his core team on development of the brand in the U.S. and the publicity, and my role changed in that I no longer did the day-to-day press for Virgin Atlantic Airways, but I was in charge of all of Sir Richard Branson publicity. And at that point he was starting up new companies and involved in the launchings of all the new companies he was

1 L. Levin-Hyams

2 getting involved in.

3 Q. What were those companies?

4 A. I was with Virgin Atlantic Airways,
5 which was the first major company in the United
6 States. Virgin Records began, I believe, in 1986,
7 and I worked with them, but I did not work on the
8 product there. From there they started Virgin
9 retail, the Virgin entertainment group, which was
10 the very beginning mega store, the first store was
11 in 1992, I believe, I think lost its lease. And I
12 worked on the opening of that store, the publicity
13 around it and the events at the store.

14 And from there the brand quickly began
15 to grow, and where he expanded to Virgin
16 Entertainment stores throughout the U.S. After
17 that was we had a small airline that didn't do
18 that well called Vantage Airlines, which was -- it
19 was sort of a travel adventure back in time
20 between Key West and Orlando, and it was done with
21 1940s style plans. And everything was happening
22 on D Day. It was a great venture, but not very
23 successful, so it didn't last.

24 Then there was Virgin Sound and Vision
25 Virgin games, Virgin various companies in the U.S.

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2 that I was involved with peripherally.

3 Q. You mentioned before the Virgin
4 Entertainment Group.

5 A. Yes.

6 Q. As part of your job responsibilities,
7 either as VP corporate affairs or in your prior
8 positions with Virgin, were you involved with or
9 responsible for the placement of press or articles
10 to the press?

11 A. Yes. Initially I was involved in the
12 opening of all the stores I worked on. Normally
13 we would do some type of rather sensational
14 publicity stunt, photo opening, using Sir Richard,
15 and we would do big parties with super stars and
16 major artists in the music industry and reaching
17 out to the people in the industry and the general
18 public, and I would be involved in the planning
19 and the implementation of that event. And
20 securing press for it.

21 MS. LESSER: Off the record.

22 (Discussion off the record.)

23 (Exhibit 54, document, marked for
24 identification, as of this date.)

25 Q. I'm going to put before you what has

1 L. Levin-Hyams

2 been marked as Exhibit Number 54.

3 Can you identify this exhibit for the
4 record?

5 A. Yes. It is an article that ran in the
6 Las Vegas Review Journal and Las Vegas Sun, and it
7 is talking about the opening of Virgin mega store
8 in Las Vegas. And I was involved in this. I
9 don't have the exact date.

10 Q. And do you have copies of this article
11 anyplace in your offices?

12 A. Yes, I do. I keep an archive of all
13 the press I have secured during my years at
14 Virgin.

15 Q. Would this be one of the articles you
16 keep?

17 A. Absolutely.

18 Q. Do you recognize this article?

19 A. Yes, I do, actually, I remember it,
20 and I and Adam.

21 Q. When you say "Adam" --

22 A. I remember Adam.

23 Q. Who is that?

24 A. Adam Steinhauer, S-t-e-i-n-h-a-u-e-r.

25 Q. Today what are the primary companies

1 L. Levin-Hyams

2 within the Virgin group?

3 A. In the U.S.?

4 Q. Yes?

5 A. We have Virgin Atlantic Airways, which
6 is headquartered in Norwalk, Connecticut, and the
7 airline flies out of JFK, Newark, Boston, Orlando,
8 Miami, Washington, San Francisco, Los Angeles and
9 Las Vegas. I think that's everything. And then
10 we have V2 Records, which is a small independent
11 label that is based in New York City and has such
12 artists as Moby, the White Stripes, Granddaddy.
13 And we have Virgin Mobile, which is based more in
14 New Jersey, which is based in Warren, New Jersey,
15 W-a-r-r-e-n, and that is our mobile phone company,
16 and it has targeted the youth market and using
17 music as the main vehicle.

18 We have the Virgin Entertainment
19 Group, which is headquartered in Los Angeles with,
20 I will say, approximately 21 to 24 stores
21 throughout the U.S. I can't recall exactly all
22 the locations off the top of my head.

23 Do you want me to give you as many as
24 I can?

25 Q. No.

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2 A. We have Virgin U.S.A. which is a
3 company that's based in New York which is looking
4 for joint venture opportunities, licensing
5 opportunities to expand the brand in America,
6 which we are doing at this time. The brand is at
7 a new phase in its development, and I think that
8 all eyes are on America. This is going to be the
9 greatest growth market for the brand in the world.
10 Sir Richard is completely committed to making this
11 brand the biggest lifestyle brand in America at
12 this time. With success of Virgin Mobile that has
13 shown him just all the potential in America. And
14 we just launched two weeks ago a new company
15 called Virgin Pulse, which takes us into a whole
16 new direction in the U.S. It's a company of
17 electronic consumer goods also targeting our music
18 and going back to our roots, targeting the
19 entertainment industry and music consumers. It's
20 about 25 products in the line. And what's most
21 exciting about this company from internal brand
22 perspective, it's the first time we started a new
23 company in America without it being another
24 company that was successful prior in the UK or
25 elsewhere in the world. And based on the success

1 L. Levin-Hyams
2 of Virgin Pulse in America, it will expand
3 globally.

4 We also have a small baby company in
5 San Francisco called Virgin Limousines, which is
6 primarily for our Virgin Atlantic customers, and
7 that also has a potential to expand beyond San
8 Francisco.

9 Q. Do you do public relations for all of
10 these entities?

11 A. I do -- I am overseeing -- I'm
12 involved with all of these companies. I am not --
13 each company has their own PR manager or director,
14 and they are involved in the day-to-day of each
15 company, and they are involved with the product
16 that they are representing with or selling and
17 they are specialist in that area. I am much more
18 of a specialist in the virgin brand and Sir
19 Richard Branson, but I would not be the
20 spokesperson for any particular company. I'm
21 overseeing the brand and Sir Richard Branson
22 primarily. I liaison between all the companies.
23 I communicate internally and externally, and when
24 there is opportunity that's more of a brand story
25 than a story about Virgin Mobile or story about

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2 Virgin Atlantic, then I will be involved in that
3 process and will be the spokesperson on that.

4 Q. By overseeing, is there a uniform
5 image for the brand in all these entities?

6 A. Yes. What we try to do is stay true
7 to our core values, and that is that we do things
8 differently, that they are fun, that we are giving
9 consumers greater value for their money, and that
10 when we see something in the marketplace that we
11 feel we could do better, we never are afraid to
12 take on a challenge and try. We historically have
13 been a very youth-oriented brand, and we are
14 becoming more of a lifestyle brand now, and it's
15 more attitude than age. It's about having fun,
16 taking care of your employees first, then your
17 customers will be happy. The companies are
18 privately-held so --

19 Q. I would like to put before you what we
20 will mark as Exhibit 55, which is identified as
21 the Virgin reel 2003. I'm sorry.

22 (Exhibit 55, document, marked for
23 identification, as of this date.)

24 Q. Can you identify this exhibit for the
25 record?

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2 A. That's the Virgin reel 2003, and what
3 this is is a video that we use internally for new
4 employees and also for public speaking events to
5 show the breadth of the brand to show what it was,
6 what it's becoming and where it's going, and to
7 capture the whole field of what the brand is about
8 in the U.S. and globally. It's a reel that we
9 have a department in the UK where they oversee the
10 brand to make sure that all the companies are in
11 sync and stay true to the values, and it's sort of
12 an internal teaching tool for new employees so
13 they can see just what Virgin means and what it's
14 about, and it's used -- it gets updated fairly
15 frequently, probably every six months or so, to
16 add the new companies that are coming on.
17 Basically it's a montage of commercials,
18 promotional stunts, things of Sir Richard and
19 events that we have done and products and
20 advertising done to really good music. It's very
21 fast and captures the feel of Virgin brand.

22 Q. Is this used in the U.S.?

23 A. Yes. And worldwide.

24 Q. I will play the video so you can view
25 this.

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2 A. Yes.

3 Q. Are you familiar with the Virgin reel
4 2003 video? Did you help prepare the video?

5 A. Well, some of the footage that is in
6 there from events and things I have done, so I
7 supplied footage, but I wasn't involved in the
8 production of it.

9 Q. Do you maintain copies of the videos
10 in your offices?

11 A. Yes.

12 Q. We just viewed what I would represent
13 to were the videos.

14 Does that look to you to be a true and
15 accurate copy of the video as you know it?

16 A. Absolutely.

17 Q. You mentioned the focus of the brand
18 in terms of image.

19 Is there a primary industry focus of
20 the Virgin brands in the U.S.?

21 A. I would say entertainment music and
22 its evolving into lifestyle, but I think music is
23 an underlying part of everything that we do in
24 entertainment, yes.

25 Q. What types of public relations

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2 events -- are you involved in placement of public
3 relation events?

4 A. Yes.

5 Q. What types of public relation events
6 have been placed involving music and entertainment
7 overall, or is this something that would be done
8 by an individual brand?

9 A. It depends on what they are trying to
10 achieve if Sir Richard is involved. Can you be a
11 little more specific?

12 Q. You mentioned that one of the most
13 recent companies is Virgin Pulse.

14 Were you involved in any promotional
15 events with that?

16 A. Yes, I actually headed up the whole
17 launch on Virgin Pulse as far as the publicity,
18 the media coverage that we garnered, and we did a
19 party and event the evening of October 15 that I
20 had organized.

21 Q. Did you also work in preparation of
22 literature regarding Virgin Pulse?

23 A. I worked on the press release and the
24 press packs. I did not work on the specific
25 product information.

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2 MS. LESSER: Off the record.

3 (Discussion off the record.)

4 MS. LESSER: I will ask this be marked
5 as Exhibit 56.

6 (Exhibit 56, document, marked for
7 identification, as of this date.)

8 Q. I am going to put before you what we
9 have marked as Exhibit Number 56.

10 Can you identify this exhibit for the
11 record?

12 A. Yes, I can. It's the Virgin Pulse
13 press pack that we gave out to the media that
14 attended our event on October 15.

15 Q. And what is the purpose of giving out
16 press packs to the media?

17 A. It was to educate them about the new
18 product launch, but we actually started reaching
19 out to the media in July, when we were working in
20 July of 2003, and we did a press trip to Necker,
21 N-e-c-k-e-r, Island in early August, took media
22 down there, and then did desk side interviews with
23 key editors that cover electronic consumer goods
24 in the main consumer press in August. And all of
25 this was leading up to the announcement

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2 September 8 that the product would be rolling out
3 into the stores through Target, and Virgin may
4 stores. And then we, once the product was in
5 place, we had a party October 15, and we did a
6 press event to announce the product was completely
7 rolled out in Manhattan, and we had -- Sir Richard
8 Branson was a part of this, and during that day we
9 had a full day media, and we did The Today Show, a
10 Charlie Rose and ABC News, CNN, New York Times
11 round table and various other media.

12 Q. What types of products are sold under
13 the Virgin Pulse trademark?

14 A. It's a consumer electronics line.
15 There's approximately 15 products in the line, MP
16 three player disk, CD player, a DVD player, that
17 is CD player that can be played in a car. Phones
18 and walkie-talkies, CD roms and various other
19 products. That's about it. There are two
20 versions of MP three player head phones -- there's
21 two versions of MP three player. And that's about
22 it.

23 Q. You mentioned that the primary
24 industry focus in the U.S. is entertainment and
25 music.

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2 A. Yes.

3 Q. Does Virgin sell instruments in the
4 U.S.?

5 A. Not to my knowledge.

6 Q. Do they sell instruments anywhere
7 else?

8 A. I believe in the Oxford store in
9 London they are now selling musical instruments
10 there, and they are also, I believe they also have
11 lessons, music lessons there to come and learn how
12 to play guitars and other instruments.

13 Q. What is the purpose of having lessons
14 and selling instruments to the Oxford Street
15 store? You mean Oxford London?

16 A. Yes. The purpose is that Virgin's
17 constantly reinventing itself and trying to do
18 better, so they are changing. We are staying true
19 to our core values and the roots of music and
20 natural extension of the brand toys, actually
21 bring the instruments into that music environment
22 where people are coming to buy CDs or whatever, so
23 it made sense to try to add another dimension to
24 the stores. So that's the first store that we are
25 doing it at. I have been told it's very

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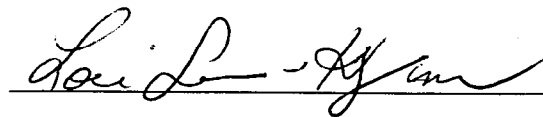
2 successful, and they are looking at possibly doing
3 it in the United States as well. It's basically a
4 natural brands extension. And the only thing --
5 the question is why we hadn't done it sooner.

6 Q. And is this something that if and when
7 it's brought to the U.S. you would be involved in
8 rolling out this extension?

9 A. Yes, I would be involved in that as
10 well.

11 MS. LESSER: Thank you very much.

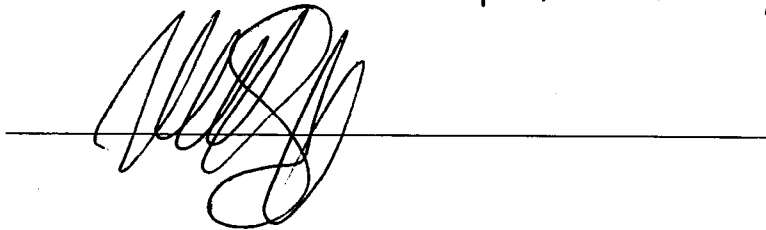
12 (Time noted: 11:05 a.m.)

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15 

16 L. Levin-Hyams

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19 Subscribed and sworn to before me

20 this 16 day of April, 2004.

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22 
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24
25 MARTIN SENOFF
Notary Public, New Jersey
My Commission Expires May 22, 2007

C E R T I F I C A T E

STATE OF NEW YORK)

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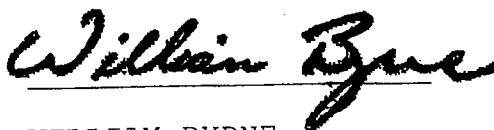
COUNTY OF NEW YORK)

I, WILLIAM BYRNE, a Notary Public
within and for the State of New York, do
hereby certify:

That LORI LEVIN-HYAMS, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the testimony
given by the witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no
way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 17th day of November, 2003.


WILLIAM BYRNE

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----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
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